



Montana Legislative History

Chapter: 456 Session L: 2003

Bill Number: 263 Senate

Checklist of Bill History

History and Final Status Sheet ☐

Introduced Bill ☐

Fiscal Note ☐

Third Reading Bill ☐

Final Version of Bill ☐

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/14/2003	Hearing Date(s): 1/30/2003
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: *SK Marshall*

Date: *3/20/24*

Notes:

Any committee minutes will be held by the Montana Historical Society!

Bill Draft Number: LC1715**Bill Type - Number:** SB 263**Short Title:** Child hearsay exception**Primary Sponsor:** Duane Grimes (R) SD 20**Chapter Number:** 456**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 49

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/22/2003			
(S) Signed by Governor	04/22/2003			
(S) Transmitted to Governor	04/16/2003			
(H) Signed by Speaker	04/15/2003			
(S) Signed by President	04/15/2003			
(S) Returned from Enrolling	04/15/2003			
(C) Printed - New Version Available	04/14/2003			
(S) Sent to Enrolling	04/11/2003			
(S) 3rd Reading Passed as Amended by House	04/11/2003	50	0	
(S) Scheduled for 3rd Reading	04/11/2003			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/10/2003	49	0	
(S) Scheduled for 2nd Reading	04/10/2003			
(S) Scheduled for 2nd Reading	04/09/2003			
(H) Returned to Senate with Amendments	04/04/2003			
(H) 3rd Reading Concurred	04/04/2003	95	5	
(H) Scheduled for 3rd Reading	04/04/2003			
(H) 2nd Reading Concurred	04/03/2003	97	1	
(H) Scheduled for 2nd Reading	04/03/2003			
(C) Printed - New Version Available	03/31/2003			
(H) Committee Report--Bill Concurred as Amended	03/31/2003			(H) Judiciary
(H) Committee Executive Action--Bill Concurred as Amended	03/29/2003	15	3	(H) Judiciary
(H) Hearing	03/14/2003			(H) Judiciary
(H) Referred to Committee	03/07/2003			(H) Judiciary
(H) First Reading	03/07/2003			
(S) Transmitted to House	02/10/2003			
(S) 3rd Reading Passed	02/10/2003	49	0	
(S) Scheduled for 3rd Reading	02/10/2003			
(S) 2nd Reading Passed on Voice Vote	02/08/2003	49	0	
(S) Scheduled for 2nd Reading	02/08/2003			
(S) Scheduled for 2nd Reading	02/07/2003			
(C) Printed - New Version Available	02/05/2003			
(S) Committee Report--Bill Passed as Amended	02/05/2003			(S) Judiciary
(S) Committee Executive Action--Bill Passed as Amended	02/05/2003	9	0	(S) Judiciary
(S) Hearing	01/30/2003			(S) Judiciary
(C) Introduced Bill Text Available Electronically	01/25/2003			
(S) Referred to Committee	01/25/2003			(S) Judiciary
(S) First Reading	01/25/2003			
(S) Introduced	01/25/2003			
(C) Draft Delivered to Requester	01/24/2003			
(C) Draft Ready for Delivery	01/23/2003			
(C) Draft in Assembly/Executive Director Review	01/22/2003			
(C) Draft in Final Drafter Review	01/21/2003			
(C) Bill Draft Text Available Electronically	01/21/2003			
(C) Draft in Input/Proofing	01/21/2003			
(C) Draft to Drafter - Edit Review [SAB]	01/21/2003			
(C) Draft in Edit	01/20/2003			
(C) Draft in Legal Review	01/20/2003			
(C) Draft to Requester for Review	01/18/2003			
(C) Draft Request Received	12/17/2002			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Middle Initial
Requester	Grimes	Duane	
Drafter	Lane	Valencia	
Primary Sponsor	Grimes	Duane	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Evidence		Simple	EVID
Minors (see also: Family Law)		Simple	MIN

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 456
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s) Effective Date Date Qualified
All Sections 01-JUL-03

SENATE BILL NO. 263

INTRODUCED BY GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD WITNESS OR VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of or witnesses to sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. SECTION 1. PURPOSE. (1) THE PURPOSE OF [SECTION 2] IS TO CODIFY AN EXCEPTION TO THE HEARSAY RULE FOR A STATEMENT FROM A CHILD WHO WAS A VICTIM OF A SEXUAL OR VIOLENT CRIME OR A WITNESS TO A SEXUAL OR VIOLENT CRIME. THE CHILD MAY BE AVAILABLE OR UNAVAILABLE FOR THE CRIMINAL HEARING. THE LEGISLATURE HAS THE AUTHORITY TO ENACT EXCEPTIONS TO THE HEARSAY RULE UNDER RULE 802 OF THE MONTANA RULES OF EVIDENCE. THE LEGISLATURE ALSO HAS THE AUTHORITY TO ENACT LAWS TO PROTECT MONTANA'S CHILDREN.~~

~~(2) [SECTION 2] REQUIRES NOTICE, A HEARING, AND A RULING FROM THE COURT BEFORE A CHILD'S STATEMENT~~

~~IS ADMITTED INTO EVIDENCE. THESE MANDATORY PROCEDURES PROTECT THE DEFENDANT'S CONFRONTATION RIGHTS
IN A CRIMINAL PROCEEDING.~~

~~———— (3) THE STATE OF MONTANA HAS AN INTEREST IN PROTECTING THE WELFARE OF CHILDREN GENERALLY AND IN
PROTECTING THE WELL-BEING OF CHILDREN WHO ARE VICTIMIZED BY AND WHO WITNESS VIOLENT AND SEXUAL CRIMES.
THE STATE OF MONTANA ALSO HAS AN INTEREST IN GIVING CHILD VICTIMS AND WITNESSES A VOICE IN CRIMINAL
PROCEEDINGS. [SECTION 2] PROTECTS CHILDREN FROM HAVING TO APPEAR IN CRIMINAL PROCEEDINGS WHEN THEIR
TESTIMONY IS UNNECESSARY UNDER [SECTION 2].~~

NEW SECTION. **Section 1. Child hearsay exception -- criminal proceedings.** (1) Otherwise
inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

(a) the declarant of the out-of-court statement is a child who is:

(i) an alleged victim of a sexual offense or other crime of violence, including partner or family member
assault, that is the subject of the criminal proceeding; or

(ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member
assault, that is the subject of the criminal proceeding;

(b) the court finds, ~~after a hearing conducted outside the presence of the jury,~~ that the time, content,
and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) ~~(i) the child testifies and the court finds that the child has not fully and accurately described the
offense and the facts and circumstances surrounding the offense; or~~

~~———— (ii) the child is unavailable as a witness, whether through death, absence from the jurisdiction,
incompetency, illness, infirmity, or other similar reason, including but not limited to trauma induced by the
courtroom setting;~~

(d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the
point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse
party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate
time, date, and location of the statement, the person to whom the statement was made, WHETHER ANY
VIDEOTAPES AND RECORDINGS OF ANY INTERVIEWS OF THE CHILD ARE IN THE POSSESSION OR SUBJECT TO THE CONTROL
OF THE PARTY INTENDING TO OFFER THE CHILD HEARSAY TESTIMONY, and the circumstances surrounding the
statement that ~~indicate~~ THE OFFERING PARTY BELIEVES SUPPORT the statement's reliability.

1 (2) ~~The admissibility of evidence under subsection (1) is in the discretion of the judge and that decision~~
2 ~~may not be overturned unless an abuse of discretion is clearly shown.~~ The judge COURT shall issue findings of
3 fact and conclusions of law setting forth the ~~judge's ruling~~ COURT'S REASONING on the admissibility of ~~child~~
4 ~~hearsay~~ THE CHILD'S testimony.

5 (3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2),
6 ~~a judge may~~ COURT SHALL consider the following:

7 (a) the attributes of the child hearsay declarant, including:

8 (i) the child's age;

9 (ii) the child's ability to communicate verbally;

10 (iii) the child's ability to comprehend the statements or questions of others;

11 (iv) the child's ability to tell the difference between truth and falsehood;

12 (v) the child's motivation to tell the truth, including whether the child understands the general obligation
13 to speak truthfully and not fabricate stories;

14 (vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create
15 an accurate memory of the incident; and

16 (vii) whether the child possesses sufficient memory to retain an independent recollection of the events
17 at issue;

18 (b) information regarding the witness who is relating the child's hearsay statement, including:

19 (i) the witness's relationship to the child;

20 (ii) whether the relationship between the witness and the child ~~might have~~ HAS an impact on the
21 trustworthiness of the child's hearsay statement;

22 (iii) whether the witness ~~might have~~ HAS a motive to fabricate or distort the child's statement; and

23 (iv) the circumstances under which the witness heard the child's statement, including the timing of the
24 statement in relation to the incident at issue and the availability of another person in whom the child could
25 confide;

26 (c) information regarding the child's statement, including:

27 (i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;

28 (ii) whether the statement was ~~volunteered spontaneously~~ SPONTANEOUS;

29 (iii) the suggestiveness of ~~prior statements by the witness relating the statement or by third parties~~
30 ~~present when the statement was made~~ OTHER PERSONS TO THE CHILD AT THE TIME THAT THE CHILD MADE THE

1 STATEMENT;

2 (iv) if statements were made by the child to more than one person, whether those statements were
3 consistent; and

4 (v) the nearness in time of the statement to the incident at issue;

5 (d) the availability of corroborative evidence through physical evidence or circumstantial evidence of
6 motive or opportunity, including:

7 (i) whether the alleged act can be corroborated; and

8 (ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and

9 (e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay
10 testimony.

11 (4) AS USED IN THIS SECTION, "CHILD" MEANS A PERSON UNDER 15 YEARS OF AGE.

12

13 NEW SECTION. Section 2. Codification instruction. ~~[Section 1] is [SECTIONS 1 AND 2 SECTION 1] ARE~~
14 ~~is~~ intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter
15 16, part 2, apply to ~~[section 1]~~ [SECTIONS 1 AND 2 SECTION 1].

16

17 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,
18 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

19

20 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
22 the part remains in effect in all valid applications that are severable from the invalid applications.

23

24 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2003.

25

26 NEW SECTION. Section 6. Applicability. [This act] applies to criminal proceedings begun after June
27 30, 2003.

28

- END -

SENATE BILL NO. 263
INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD WITNESS OR VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of or witnesses to sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Child hearsay exception -- criminal proceedings. (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

(a) the declarant of the out-of-court statement is a child who is:

(i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or

(ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;

(b) the court finds, after a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) (i) the child testifies and the court finds that the child has not fully and accurately described the offense and the facts and circumstances surrounding the offense; or

(ii) the child is unavailable as a witness, whether through death, absence from the jurisdiction, incompetency, illness, infirmity, or other similar reason, including but not limited to trauma induced by the courtroom setting;

(d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate the statement's reliability.

(2) The admissibility of evidence under subsection (1) is in the discretion of the judge and that decision may not be overturned unless an abuse of discretion is clearly shown. The judge shall issue findings of fact and conclusions of law setting forth the judge's ruling on the admissibility of child hearsay testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a judge may consider the following:

(a) the attributes of the child hearsay declarant, including:

(i) the child's age;

(ii) the child's ability to communicate verbally;

(iii) the child's ability to comprehend the statements or questions of others;

(iv) the child's ability to tell the difference between truth and falsehood;

(v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the child's hearsay statement, including:

(i) the witness's relationship to the child;

(ii) whether the relationship between the witness and the child might have an impact on the trustworthiness of the child's hearsay statement;

(iii) whether the witness might have a motive to fabricate or distort the child's statement; and

(iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;

(c) information regarding the child's statement, including:

(i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;

(ii) whether the statement was volunteered spontaneously;

(iii) the suggestiveness of prior statements by the witness relating the statement or by third parties present when the statement was made;

(iv) if statements were made by the child to more than one person, whether those statements were consistent; and

(v) the nearness in time of the statement to the incident at issue;

(d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:

(i) whether the alleged act can be corroborated; and

(ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and

(e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2003.

NEW SECTION. **Section 6. Applicability.** [This act] applies to criminal proceedings begun after June 30, 2003.

- END -

SENATE BILL NO. 263
INTRODUCED BY GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD WITNESS OR VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of or witnesses to sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. SECTION 1. PURPOSE. (1) THE PURPOSE OF [SECTION 2] IS TO CODIFY AN EXCEPTION TO THE HEARSAY RULE FOR A STATEMENT FROM A CHILD WHO WAS A VICTIM OF A SEXUAL OR VIOLENT CRIME OR A WITNESS TO A SEXUAL OR VIOLENT CRIME. THE CHILD MAY BE AVAILABLE OR UNAVAILABLE FOR THE CRIMINAL HEARING. THE LEGISLATURE HAS THE AUTHORITY TO ENACT EXCEPTIONS TO THE HEARSAY RULE UNDER RULE 802 OF THE MONTANA RULES OF EVIDENCE. THE LEGISLATURE ALSO HAS THE AUTHORITY TO ENACT LAWS TO PROTECT MONTANA'S CHILDREN.

(2) [SECTION 2] REQUIRES NOTICE, A HEARING, AND A RULING FROM THE COURT BEFORE A CHILD'S STATEMENT IS ADMITTED INTO EVIDENCE. THESE MANDATORY PROCEDURES PROTECT THE DEFENDANT'S CONFRONTATION RIGHTS

IN A CRIMINAL PROCEEDING.

(3) THE STATE OF MONTANA HAS AN INTEREST IN PROTECTING THE WELFARE OF CHILDREN GENERALLY AND IN PROTECTING THE WELL-BEING OF CHILDREN WHO ARE VICTIMIZED BY AND WHO WITNESS VIOLENT AND SEXUAL CRIMES. THE STATE OF MONTANA ALSO HAS AN INTEREST IN GIVING CHILD VICTIMS AND WITNESSES A VOICE IN CRIMINAL PROCEEDINGS. [SECTION 2] PROTECTS CHILDREN FROM HAVING TO APPEAR IN CRIMINAL PROCEEDINGS WHEN THEIR TESTIMONY IS UNNECESSARY UNDER [SECTION 2].

NEW SECTION. **Section 2. Child hearsay exception -- criminal proceedings.** (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

- (a) the declarant of the out-of-court statement is a child who is:
 - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
 - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
- (b) the court finds, after a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;
- (c) (i) the child testifies and the court finds that the child has not fully and accurately described the offense and the facts and circumstances surrounding the offense; or
 - (ii) the child is unavailable as a witness, whether through death, absence from the jurisdiction, incompetency, illness, infirmity, or other similar reason, including but not limited to trauma induced by the courtroom setting;
- (d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and
- (e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, WHETHER ANY VIDEOTAPES AND RECORDINGS OF ANY INTERVIEWS OF THE CHILD ARE IN THE POSSESSION OR SUBJECT TO THE CONTROL OF THE PARTY INTENDING TO OFFER THE CHILD HEARSAY TESTIMONY, and the circumstances surrounding the statement that indicate the statement's reliability.

(2) The admissibility of evidence under subsection (1) is in the discretion of the judge and that decision may not be overturned unless an abuse of discretion is clearly shown. The judge shall issue findings of fact and

conclusions of law setting forth the judge's ruling on the admissibility of child hearsay testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a judge may consider the following:

(a) the attributes of the child hearsay declarant, including:

(i) the child's age;

(ii) the child's ability to communicate verbally;

(iii) the child's ability to comprehend the statements or questions of others;

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NEW SECTION. **Section 3. Codification instruction.** ~~[Section 1] is~~ [SECTIONS 1 AND 2] ARE intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to ~~[section 1]~~ [SECTIONS 1 AND 2].

NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 7. Applicability.** [This act] applies to criminal proceedings begun after June 30, 2003.

- END -

SENATE BILL NO. 263
INTRODUCED BY GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD WITNESS OR VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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IN A CRIMINAL PROCEEDING:

~~— (3) THE STATE OF MONTANA HAS AN INTEREST IN PROTECTING THE WELFARE OF CHILDREN GENERALLY AND IN PROTECTING THE WELL-BEING OF CHILDREN WHO ARE VICTIMIZED BY AND WHO WITNESS VIOLENT AND SEXUAL CRIMES. THE STATE OF MONTANA ALSO HAS AN INTEREST IN GIVING CHILD VICTIMS AND WITNESSES A VOICE IN CRIMINAL PROCEEDINGS. [SECTION 2] PROTECTS CHILDREN FROM HAVING TO APPEAR IN CRIMINAL PROCEEDINGS WHEN THEIR TESTIMONY IS UNNECESSARY UNDER [SECTION 2].~~

NEW SECTION. **Section 1. Child hearsay exception -- criminal proceedings.** (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

- (a) the declarant of the out-of-court statement is a child who is:
 - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
 - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
 - (b) the court finds, ~~after a hearing conducted outside the presence of the jury,~~ that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;
 - (c) ~~(i) the child testifies and the court finds that the child has not fully and accurately described the offense and the facts and circumstances surrounding the offense; or~~
~~— (ii) the child is unavailable as a witness, whether through death, absence from the jurisdiction, incompetency, illness, infirmity, or other similar reason, including but not limited to trauma induced by the courtroom setting;~~
 - (d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and
 - (e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, WHETHER ANY VIDEOTAPES AND RECORDINGS OF ANY INTERVIEWS OF THE CHILD ARE IN THE POSSESSION OR SUBJECT TO THE CONTROL OF THE PARTY INTENDING TO OFFER THE CHILD HEARSAY TESTIMONY, and the circumstances surrounding the statement that ~~indicate~~ THE OFFERING PARTY BELIEVES SUPPORT the statement's reliability.
- (2) ~~The admissibility of evidence under subsection (1) is in the discretion of the judge and that decision may not be overturned unless an abuse of discretion is clearly shown.~~ The judge COURT shall issue findings of

fact and conclusions of law setting forth the ~~judge's ruling~~ COURT'S REASONING on the admissibility of child hearsay THE CHILD'S testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a ~~judge may~~ COURT SHALL consider the following:

- (a) the attributes of the child hearsay declarant, including:
 - (i) the child's age;
 - (ii) the child's ability to communicate verbally;
 - (iii) the child's ability to comprehend the statements or questions of others;
 - (iv) the child's ability to tell the difference between truth and falsehood;
 - (v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;
 - (vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and
 - (vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;
- (b) information regarding the witness who is relating the child's hearsay statement, including:
 - (i) the witness's relationship to the child;
 - (ii) whether the relationship between the witness and the child ~~might have~~ HAS an impact on the trustworthiness of the child's hearsay statement;
 - (iii) whether the witness ~~might have~~ HAS a motive to fabricate or distort the child's statement; and
 - (iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;
- (c) information regarding the child's statement, including:
 - (i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;
 - (ii) whether the statement was ~~volunteered spontaneously~~ SPONTANEOUS;
 - (iii) the suggestiveness of ~~prior statements by the witness relating the statement or by third parties present when the statement was made~~ OTHER PERSONS TO THE CHILD AT THE TIME THAT THE CHILD MADE THE STATEMENT;
 - (iv) if statements were made by the child to more than one person, whether those statements were consistent; and
 - (v) the nearness in time of the statement to the incident at issue;

(d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:

- (i) whether the alleged act can be corroborated; and
- (ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and
- (e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.

(4) AS USED IN THIS SECTION, "CHILD" MEANS A PERSON UNDER 15 YEARS OF AGE.

NEW SECTION. Section 2. Codification instruction. ~~[Section 1] is [SECTIONS 1 AND 2 SECTION 1] ARE~~
IS intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to ~~[section 1] [SECTIONS 1 AND 2 SECTION 1]~~.

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2003.

NEW SECTION. Section 6. Applicability. [This act] applies to criminal proceedings begun after June 30, 2003.

- END -



AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Child hearsay exception -- criminal proceedings. (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

(a) the declarant of the out-of-court statement is a child who is:

(i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or

(ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;

(b) the court finds that the time, content, and circumstances of the statement provide circumstantial

guarantees of trustworthiness;

(c) the child is unavailable as a witness;

(d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the child's testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the child hearsay declarant, including:

(i) the child's age;

(ii) the child's ability to communicate verbally;

(iii) the child's ability to comprehend the statements or questions of others;

(iv) the child's ability to tell the difference between truth and falsehood;

(v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the child's hearsay statement, including:

(i) the witness's relationship to the child;

(ii) whether the relationship between the witness and the child has an impact on the trustworthiness of the child's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the child's statement; and

(iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;

- (c) information regarding the child's statement, including:
 - (i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;
 - (ii) whether the statement was spontaneous;
 - (iii) the suggestiveness of statements by other persons to the child at the time that the child made the statement;
 - (iv) if statements were made by the child to more than one person, whether those statements were consistent; and
 - (v) the nearness in time of the statement to the incident at issue;
 - (d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:
 - (i) whether the alleged act can be corroborated; and
 - (ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and
 - (e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.
- (4) As used in this section, "child" means a person under 15 years of age.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to criminal proceedings begun after June 30, 2003.

- END -

I hereby certify that the within bill,
SB 0263, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 263
INTRODUCED BY GRIMES

AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 327-2105
EMAIL: attorney@ci.missoula.mt.us

EXHIBIT 2
DATE 3/14/03
SB 263

March 14, 2003

Chairman Jim Shockley and Honorable Members of the House
Judiciary Committee:

Please vote for Senate Bill 263. I am a prosecutor for the City of Missoula and have prosecuted cases on behalf of the people of the state of Montana for over 16 years. This bill clarifies Montana law concerning testimony from children witnesses of violent and sexual crimes.

There are three issues that all Montanans can agree upon. First, that the law, what ever it is, should be accessible so that all people who want or need to know what the law is can find out what it says. Law must be findable. Second, a defendant's rights in a criminal trial, including his right to confront witnesses called against him, is very important, indeed, it is constitutionally guaranteed. Finally, once we have made sure that the defendant in a criminal case has his constitutional rights guaranteed, if children are not needed in court that is a good thing. Passage of Senate Bill 263 is consistent with all three of these beliefs we all hold dear.

First, Senate Bill 263 puts a 1988 ruling by the Montana Supreme Court into statutory code. The ruling, State v. J.C.E., 235 Mont. 264, 767 P.2d 309 (1988), is the law. When law is confined to a Supreme Court opinion, access to the ruling is confined to lawyers and non lawyer people who are interested in legal matters. The ruling from J.C.E. should be codified in the criminal procedure statutes. That just makes good sense.

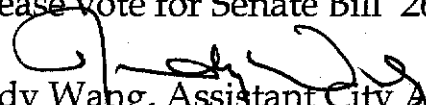
Second, a defendant's constitutional rights in a criminal case, including the right to confront witnesses called against him, are fully protected under this bill. Senate Bill 263 allows children's hearsay statements into evidence only in cases where the child was the victim of a violent or sexual assault or a witness to a violent or sexual

assault. Procedurally, an offender is entitled to written notice describing the statement including what the child said, the approximate date, time, and location of the statement, who the child told and the circumstances of the statement that indicate why the statement is reliable. This bill gives a detailed list of factors for the court to review in its trustworthiness analysis. The factors include the child's age, ability to communicate and tell the difference between the truth and a lie. The judge may also review the statement for facts that children of that age shouldn't know. The judge may look to the witness the child spoke to and evaluate the timing of the statement and the relationship between the witness and the child. The court must find, after a hearing, that the time, content and circumstances of the statement provide circumstantial guarantees of trustworthiness. The judge shall enter findings of fact and conclusions of law in support of his decision on the admissibility of the evidence. A judge, who is experienced at determining the reliability of witnesses, is given the authority to decide whether this child's statement is trustworthy thus admissible, or not.

In the J.C.E. case The Montana Supreme Court dictated this procedure as the formula to follow when a child's statement is at issue. Thus, this procedure has already been approved as the procedure to follow to protect the defendant's rights.

Senate Bill 263 does not keep all children from testifying in court. This bill will allow some children's statements admitted into court and sometimes we will have an opportunity to keep kids out of court. The job assigned to children is to grow, learn, and have fun. The job assigned to kids is not to appear in court. We already know from domestic violence cases that it is extremely difficult for one adult who loves and fears another family member to testify against an adult family member. Why should it be easier for a child to testify when the offender is probably someone that they know and trust?

Please vote for Senate Bill 263.


Judy Wang, Assistant City Attorney



March 12, 2003

Chairman Jim Shockley and the Honorable Members of the House Judiciary Committee:

I write to encourage your support of SB 263, codifying Montana law regarding child hearsay. A specific hearsay exception for child witnesses is necessary because traditional hearsay exceptions often fall short of their purpose when applied to the testimony of children. The application of current hearsay exceptions leads to a strained interpretation of existing statutes. However, Montana case law, in step with other jurisdictions, has evolved to allow for a child hearsay exception, as seen in cases such as *State v. J.C.E.* Providing a clear statute will assist judges and prosecutors, as well as defense attorneys, in appropriately evaluating child hearsay. The proposed statute establishes the proper procedure, clarifies the requirements, and eliminates confusion currently permeating this area of law.

As you know, hearsay is defined as a statement given out of the courtroom by one individual, which is then presented in court by another individual. Observations and disclosures made by young witnesses often become important in child sexual abuse cases because children frequently and sporadically talk about events they have seen or experienced. If a child is unable or unwilling to testify in court regarding the incident which occurred, the previously given hearsay statement may be introduced during the trial as evidence, either with or without the child also testifying, if that statement has been deemed reliable by the trial court.

Traditional rules of evidence are not well tailored for witnesses of tender years. The rules of evidence and existing hearsay exceptions were constructed around adult testimony. Over time, the courts have struggled with adapting the adult hearsay rules as children have testified more frequently in court. However, children are different than adults. Children experience, disclose, remember, and recite events differently than adults. Children frequently delay reporting sexual abuse, especially when this abuse is perpetrated by a parent or close relative, because of the child's fear, loyalty, confusion, or lack of comprehension and, for the same reasons, experience significantly more trauma than adults when testifying about abuse.

Child hearsay statements are essential in the prosecution of child abuse or neglect cases because often when child sexual abuse occurs, no one but the abuser and the victim are present. If the child is for some reason unable to testify in court (for reasons such as illness, risk of further trauma, or loss of memory) the child's version of what occurred, if reliable, can still be offered as evidence without the child having to necessarily testify through the introduction of the hearsay statement.

Specific statutory exceptions to allow for the introduction of child hearsay statements are common. Approximately forty states, including other Ninth Circuit states like Alaska and Washington, have amended their evidentiary laws to allow for child hearsay exceptions. For example, Washington has a hearsay statute substantially similar to the proposed statute. That Washington statute was found to not violate an accused's confrontation rights.

The current proposed statute allows child hearsay statements into court only after the court has sufficient proof of the statement's reliability. This reliability counterbalances the fact that the accused will not be able to confront his accuser because admissibility is limited to only those statements of the utmost trustworthiness. The interests of protecting the child and society from an abuser must be balanced against the interests of a particular defendant. Protecting innocents from predators is an overriding goal of the justice system that is furthered by the proposed child hearsay statute, while safeguarding a defendant's right of confrontation.

Please support Senate Bill 263.

Very Truly Yours,



Kimberly Dudik



Kirsten H. LaCroix

Senior Deputy Missoula County Attorney

Chairman Schockley
Members of the Judiciary Committee

The purpose of this letter is to urge the passage of S.B. 263. It presents a fair and balanced way to address the issue of child hearsay. The bill not only protects the rights of the perpetrator of a crime but also the rights of a child which should not be denied merely because he or she is a "child" and incapable of testifying. Once again, I urge passage of this legislation.



Robert L. Zimmerman
Sanders County Attorney

March 12, 2003

Chairman Shockley
Honorable Members of the House Judiciary Committee

For the record my name is Tootie Welker. I am the executive director of a non-profit organization in Sanders County that provides direct services to victims of domestic violence, sexual assault and child abuse. Last year we assisted over 200 victims.

Although I understand and appreciate the need for upholding the rights of the accused, I also believe we need to give more balance to the rights of victims – especially our most innocent victims – children.

As someone who deals with victims daily, it is especially difficult to attend to the needs of a child and their family when it is discovered that the child has been sexually victimized and most frequently by a family member. But what can be even more difficult is to explain to a parent or a child why the bad person who hurt them is not going to be punished because the prosecutor does not want to put the child on the stand. This is the point where some folks lose faith in our justice system.

According to statistics, 1 out of 3 girls and 1 out of 7 boys will be sexually abused. And for most it happens while they are young. To then re-victimize these innocent children by putting them on the stand is in many cases simply too much. SB 263 offers an option that still attends to the rights of offenders while also providing some protection to children. By passing SB 263, this body would be simply codifying a 1988 Montana Supreme Court ruling.

In Sanders County, a jury convicted a father of sodomizing his 5-year old son. The case was appealed and overturned on a technicality. The prosecutor chose to settle for a plea bargain rather than have to put this child on the stand again. So instead of getting 10 years in prison for incest and having to register as a sex offender, the pled guilty to misdemeanor family member or partner assault. Is this justice? Does this keep communities safe? The answer is no.

It is time for us to recognize that sexual abuse of children happens and far more often than people would like to believe and with a family member being the offender. SB 263 is one more tool to assist prosecutors and the criminal justice system in keeping kids safe and not re-victimizing them by having to put them on the stand when they have disclosed they have been sexually assaulted.

**YELLOWSTONE COUNTY ATTORNEY**

217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

January 28, 2003

Senate Judiciary Committee

Mr. Chairman:

The State of Montana must act to better protect child witnesses. Passage of Senate Bill 263 will protect child witnesses without offending the constitutional rights of defendants.

Specifically, this Bill protects the children who are victims or witnesses of sexual and violent crimes. A sexual predator typically threatens a child victim with violence if he tells anyone. This pattern of sexual abuse followed by threats, creates fear and reluctance in the child to talk about the abuse. Typically, a child will not tell anyone about what happened, including the child's parents. Children who do brave their fears and overcome the reluctance to tell these most private matters to their parents, or a social worker, are often overcome with embarrassment while speaking at trial. The passage of Senate Bill 263 would protect the well-being of these children in Montana criminal proceedings by providing them a voice, when they have none.

In addition, it is extremely difficult for a young child to articulate what has happened to her, or what she has seen, because of her limited vocabulary. A toddler struggles with explaining different shapes like circles and squares, that same toddler naturally has tremendous difficulty explaining how she was sexually or physically abused; if she is able to at all. The fear and reluctance to talk about the abuse, combined with a limited vocabulary, prevents the prosecution from proceeding against defendants in many cases. Senate Bill 263 allows a prosecutor to overcome these challenges at trial by allowing reliable people to testify about what the child victim, or witness, desperately struggled to explain prior to trial.

Senate Bill 263 would provide a statutory exception to the hearsay rule without denying a defendant any of his Constitutional rights. The State of Montana affords defendants Constitutional rights which must not be abridged. This Bill does not abridge a defendant's rights because it allows the prosecution to seek the hearsay exception only in narrowly defined circumstances. The Judge in the criminal proceeding, acting as the gatekeeper of the defendant's rights, uses her discretion to apply or not apply the hearsay exception and follows the Montana Supreme Court dictates found in *State v. J.C.E.*, 235 MT 264 (1988). This Bill provides a voice to children in criminal proceedings while protecting the defendant's Constitutional rights.

Sincerely,


Dennis Paxinos

Yellowstone County Attorney


Fred Snodgrass

Deputy Yellowstone County Attorney



January 29, 2003

Senator Duane Grimes
Chairman, Senate Judiciary Committee
Montana Legislature
State Capitol
Helena, Montana 59620

Re: SB 263

Dear Chairman Grimes,

I am writing to express my support for SB 263. As you know since you are the chief sponsor of this proposal, this bill would authorize a statutory exception to general prohibition against hearsay evidence for the testimony of children who have witnessed or been victims in criminal proceedings involving sexual offenses and other crimes of violence. This legislation is particularly necessary for the following reasons:

1. Children are often the only witnesses to domestic violence.
2. Children are virtually always the only witnesses to their own physical or sexual abuse.
3. Offenders often tell children that they will be responsible for terrible things happening to the offender, the child, the family, etc., and when the offender is arrested and/or social workers get involved, the child often clams up and feels responsible for the breakup of the family.
4. Our evidentiary rules/court procedures don't take into account how hard trials can be for kids.
5. Prosecutors are in a terrible position in deciding whether to pursue or drop a case that would rely on a child testifying against a parent at trial.

As such, I hope you will be able to convince your colleagues of the value of this bill. If I can be of any further assistance, please let me know.

Yours truly,

Fred Van Valkenburg
Missoula County Attorney

CUSTER COUNTY ATTORNEY

1010 Main Street
Miles City, Montana 59301

PHONE: (406) 874-3310
FAX: (406) 874-3450
e-mail: c.magera@co.custer.mt.us

January 27, 2003

RE: LC 175 Child Hearsay Exception

To Whom It May Concern:

I strongly support the proposed Child Hearsay Exception legislation contained in LC 175 permitting the admission into evidence of statements by child victim's of sexual abuse.

As the Custer County Attorney, I have worked for the past three years with a multi-disciplinary team of professionals in Custer County to establish a regional Child Evaluation Center for conducting forensic interviews and physical examinations of child victims of physical and sexual abuse. The purpose of the Center is to assure that child victims are interviewed and examined only once. The purpose of the Center is, also, to prevent re-victimization of children by the legal system through repeated interviews and examinations. Although the Center has made great strides in protecting child victims, we need the legislature's help to enable prosecutors to present hearsay statements to juries rather than requiring small children to take the witness stand and testify against the perpetrators of the abuse, who all too often, are the child's parent.

Currently, I am prosecuting two cases of sexual abuse involving young children. The children in these cases range from 3 years to 8 years of age. Two of the children have significant language and emotional delays. The perpetrators of the sexual abuse are the children's parents. Because Montana does not have an exception for child hearsay statements, these children must testify at the trials of their parents. How terrifying for these children! How difficult for the State's prosecutors to proceed to trial knowing they must put small children on the witness stand.

Forty (40) states have recognized the need to protect child victims and have adopted similar legislation. Please give state prosecutors this tool to protect the children who have already endured so much.

Sincerely,



Coleen I. Magera
COUNTY ATTORNEY

CUSTER COUNTY ATTORNEY

1010 Main Street
Miles City, Montana 59301

PHONE: (406) 874-3310
FAX: (406) 874-3450
e-mail: custerca@midrivers.com

January 25, 2003

Letter of Support

Re: Child hearsay exception

This letter is written in support of the proposed legislation regarding an exception to allow the admission of hearsay statements of child victims of sexual abuse. This is desperately needed to effectively protect the rights of society's most vulnerable people, small children. I urge you to adopt this legislation as proposed.

As a prosecutor, I am all too familiar with the unfortunate scenario that plays out time and time again. A small child is sexually abused by a family member, but given the nature of the crime, the child is the only witness to the crime. Often these children are very young. Talking about these events is obviously traumatic for these children and they need to heal and move on. This legislation, which has many safeguards to protect a defendant's rights, would allow statements made by the child to someone she trusts to be introduced at trial without necessarily forcing the child to get up in front of a bunch of strangers and tell what happened to them again (in court).

This legislation is needed and is already found, in some version, in about forty (40) states. Please provide these children, who have already suffered so much, the small measure of protection found in this legislation.

Sincerely,



Paul R. Emerson
Deputy County Attorney

January 29, 2003

To: Senator Duane Grimes and other destinguished members
of the Montana Senate Judiciary Committee

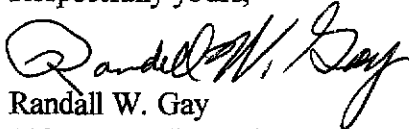
Subject: Senate Bill No. 263

Dear Senator Grimes and other destinguished Committee Members:

I would like to urge your support in bringing this Bill out of Committee. I believe that this is an important piece of legislation and deserves enactment into law. Recently, I experienced a case in my family that involved child hearsay testimony. Fortunately, the child's videotaped statement was sufficient and the child was not forced to testify against the father in a public court room. I believe if the child had been required to testify in court, it could have resulted in a devastating life experience for the child.

Protection of children who have already been tramitized as victims in sexual offenses and other crimes of violence must take precedence. I would appreciate your support of this important legislation.

Respectfully yours,



Randall W. Gay
119 E. Crestline Drive
Missoula, MT 59803

phone: 406 721-5288

January 23, 2003

Chairman Duane Brunes and Members of the Senate
Judiciary Committee,

Professionally, I work with families and young children. In that role, I am the mandated reporter of child abuse and neglect.

Personally, I have a 4 year old granddaughter who was the victim of sexual abuse committed by a close relative. Fearing that she would have to testify at the trial, thus causing further trauma and revictimization, was an enormous stress. Fortunately, for a variety of reasons, her taped interview with an expert sexual abuse counselor was used instead.

I strongly urge you to support Senate Bill 263. Hopefully, passing this bill will have a positive impact on the future of young victims of abuse crimes.

Sherry Gay
1198 Crestline Dr.
Missoula, MT 59803

EXHIBIT 3
DATE 3/14/03
SB 263

To: Chairman Shockley and Members of the House Judiciary Committee
Date: March 14, 2003
Re: Testimony in Support of SB 263

I am here representing the Montana Coalition Against Domestic & Sexual Violence. The Coalition was incorporated in 1986 and currently represents over 43 programs that provide direct service to victims of domestic and sexual violence across Montana. We work to end domestic and sexual violence through advocacy, public education, public policy, and program development.

We stand here in strong support of SB 263 and would like to extend our thanks to Senator Grimes for sponsoring this bill, which would allow statements made by a child who has been victimized in a sexual or violent offense or by a child who has witnessed such an offense to be admissible in a criminal case under strictly controlled circumstances and standards.

We believe that SB 263 is a family-friendly bill. Adding this exemption to Montana's hearsay rule will provide important protections for those children who have already been traumatized by violence and for whom a forced courtroom appearance would amount to further victimization. And, the procedural safeguards that the bill contains also protect a defendant's rights, by ensuring proper notice and maintaining judicial discretion.

Violent and sexual crimes involving children as either victims or witnesses are some of the worst cases that come before our courts. They have the potential to rip families and children's lives apart. Gone unpunished, the fallout is worse; many perpetrators who prey on children don't stop until they are stopped.

SB 263 will add one more exception to the already 31 contained in Montana Rules. It's an important one, and it's one that has already been acknowledged and upheld by the Supreme Court. I urge you to give SB 263 a "do concur" recommendation."

Beth Satre, Public Policy Specialist
Montana Coalition Against Domestic & Sexual Violence
PO Box 633, Helena MT 59624
Tel: 406.443.7794 Fax: 406.443.7818
www.mcadsv.com

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 3/14/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		



HOUSE STANDING COMMITTEE REPORT

March 14, 2003

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 257** (third reading copy -- blue) **be concurred in.**

Signed:

Representative Jim Shockley, Chair

To be carried by Representative Christopher Harris

- END -

Committee Vote:
Yes 18, No 0.

M. Peter
3/14 1:45 pm
541145SC.hhn

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-14-03

Bill No. SB-39 Sponsor(s) Sen Mahlum

PLEASE PRINT

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Don Hargrove	MAGP	X		
DAVE GALT	MOT	X		
Jim Smith	County Attys	✓		
Jim KEMBEL	MACOP MT ASSOC. OF CHIEFS OF POLICE	✓		
Gary Hegreberg	Contractors ASSO.	✓		
Kristi Blazek	MT Barbecue Inn		✓	
BRAD GJERVE	SELF		✓	
Ali Borington	Dept. of Justice	✓		
Gege CORN	Republic City Attorney	✓		
PHILIP	MADD	X		
Judy MARTZ	GOVERNOR'S OFFICE	+		
BARBARA STANG	MMCA	✓		
BOB LANGE	SELF	X		
Ed Lane				

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3/14/03

Bill No. SB 257 Sponsor(s) Cooney

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Name and Address	Representing	Support	Oppose	Inf.
Shirley K Brown	DPHHS-CFSD	✓		
Shirley K Brown				
Mike Barrett	SH; ~Artists, (4) w/Hqnc.	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-14-03

Bill No. SB-263 Sponsor(s) Sen Grimes

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Name and Address	Representing	Support	Oppose	Inf.
Judy Wang 435 Pyramon Missoula	City of Missoula	✓		
ESOBERRAL MELA CE. [unclear]	SELF	✓		
Wendy Gay 119 Crestline / Missoula	Self	✓		
Jim moon 233 redney	self	✓		
IONDA MOON 233 ROPNEY HELENA	SELF	✓		
Tim Smith	County Atty's	✓		
Beth Sahr	MT Coalition Against Domestic & Sexual Violence	✓		
Ala Boringdon	Dept. of Justice	✓		
Debra Co Rd	MTAA / Recruit/ [unclear]	✓		
Jeff [unclear]	Missoula County	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

▷

Supreme Court of Montana.

STATE of Montana, Plaintiff and Appellant,
v.

J.C.E., Defendant and Respondent.

No. 87-535.

Submitted Nov. 3, 1988.

Decided Dec. 30, 1988.

Rehearing Denied Feb. 7, 1989.

Defendant father was charged with incest. The District Court, First Judicial District, in and for County of Lewis & Clark, Thomas Honzel, J., excluded testimony by social worker and counselor concerning alleged victim, and State brought interlocutory appeal. The Supreme Court, McDonough, J., held that: (1) counselor's proposed testimony regarding credibility of statements by child who was allegedly victim of incest and identification of defendant father as perpetrator of incest was not admissible under hearsay exception for medical diagnosis or treatment; (2) residual hearsay exception of rule applicable when witness is unavailable should be the rule under which proffered hearsay, other than expert testimony, is considered for admissibility in cases of incest or other sexual abuse of children; and (3) guidelines for applying residual hearsay exception applicable when declarant is unavailable as witness were set forth for implementation in cases of incest or other sexual abuse of children when alleged victim was unavailable as witness.

Affirmed and remanded.

West Headnotes

[1] Incest 11 207k11 Most Cited Cases

Counselor's proposed testimony regarding credibility of statements of child who was allegedly victim of incest was not admissible as expert testimony, where child had been ruled incompetent to testify at trial, so her credibility as witness would not be an issue. Rules of Evid., Rule 702.

[2] Criminal Law 470(3) 110k470(3) Most Cited Cases (Formerly 110k470)

Counselor's proposed testimony identifying defendant as perpetrator of incest was not admissible as expert testimony in incest prosecution; only jury could actually decide ultimate issues such as whether crime was committed or identity of perpetrator, and whether evidence adduced by State established defendant as perpetrator required only common logic that was well within capacity of lay jury, although whether child was in fact, victim of incest was a question that might be clarified by expert opinion on child's physical or mental state. Rules of Evid., Rules 702, 704.

[3] Criminal Law 367 110k367 Most Cited Cases

Counselor's proposed testimony regarding credibility of statements by child who was allegedly victim of incest and victim's identification of defendant father as perpetrator of incest was not admissible under hearsay exception for medical diagnosis or treatment; medical diagnosis and treatment exception would not be extended beyond medical doctors, counselor was not licensed to render medical diagnoses, and she thus could not testify about diagnoses under the exception. Rules of Evid., Rule 803(4).

[4] Criminal Law 419(5) 110k419(5) Most Cited Cases

Residual hearsay exception of rule applicable when witness is unavailable should govern admissibility of proffered hearsay, other than expert testimony, in cases of incest or other sexual abuse of children when the alleged victim is unavailable. Rules of Evid., Rule 804(b)(5).

[5] Criminal Law 419(14) 110k419(14) Most Cited Cases

Before admissibility of hearsay testimony can be considered under residual hearsay exception applicable when witness is unavailable, district court must make preliminary findings that victim is unavailable as witness, proffered hearsay is evidence of material fact and more probative than any other evidence available through reasonable means, and party intending to offer hearsay testimony has given advance notice of that intention. Rules of Evid., Rule 804(b)(5).

[6] Criminal Law 419(5) 110k419(5) Most Cited Cases

CERAMIC JUDICIARY
Exhibit No. 1
Date 1-30-03
File No. SB263

Guidelines for applying residual hearsay exception applicable when declarant is unavailable as witness were set forth for implementation in cases of incest or other sexual abuse of children, to be applied after preconditions for residual hearsay exception were satisfied, but the guidelines were not mandatory. Rules of Evid., Rule 804(b)(5).

[7] Criminal Law **1153(6)**
110k1153(6) Most Cited Cases

Where court is determining circumstantial guarantees of trustworthiness to resolve whether statements should be admitted under residual hearsay exception when declarant is unavailable as witness, Supreme Court will defer to trial court's decision unless abuse of discretion is clearly shown.

[8] Criminal Law **419(14)**
110k419(14) Most Cited Cases

District court ruling on admissibility of hearsay from child who is alleged victim in cases of incest or other sexual abuse of children under residual hearsay exception applicable when declarant is unavailable as witness should be issued through findings of fact and conclusions of law setting forth decision, so that Supreme Court could conduct proper review. Rules of Evid., Rule 804(b)(5).

****310 *266** Mike Greely, Atty. Gen., Dorothy McCarter, argued, Asst. Atty. Gen., Mike McGrath, County Atty., Carolyn A. Clemens, argued, Deputy County Atty., Helena, for plaintiff and appellant.

Gregory Jackson, argued, Helena, for defendant and respondent.

McDONOUGH, Justice.

This appeal involves the admissibility of hearsay testimony regarding statements made by a child who allegedly is the victim of incest. In order to protect the child, and because the case is still in its preliminary stages, the individuals involved will be referred to by their initials. The State of Montana brings an interlocutory appeal from the order of the District Court of the First Judicial District, Lewis and Clark County, excluding testimony by a social ****311** worker and a counselor concerning S, the four-year-old daughter of the defendant. We affirm, and remand for further action.

The State frames a single issue on appeal: Did the

District Court err in refusing to allow into evidence out-of-court statements made by the victim to her counselor, Margaret Stuart, and to social worker Rita Pickering?

The facts of this case are highly contested. Because the case has not reached the trial stage, the record does not yet allow for clear distinctions between allegations by the respective parties and provable fact. However, a chronology of relevant events is as follows.

S lives in Helena with her mother. The mother and J.C.E. are divorced, and custody of S has been disputed. In March of 1987, S was in Butte visiting J.C.E. She developed "spots," which prompted J.C.E. to take her to a doctor. She was diagnosed as having chicken pox and impetigo, and put on medication. The doctor described the location of the impetigo as the "right groin."

On March 30, 1987, approximately ten days after S saw the doctor in Butte, she returned to Helena. Her mother took her to see her local physician, Dr. R.E. Kechely. At Dr. Kechely's office, S removed her panties so the doctor could examine the impetigo. S's mother noticed what appeared to be blood in the panties, and told Dr. Kechely this when he entered the examination room. He indicated initially that some of S's chicken pox may have become irritated and therefore bloody. He then performed his examination.

Dr. Kechely's record of S's visit contains the following notation:

***267** Examination showing a diffuse perineal [groin area] redness, and irritation almost to an abrasion point hymenal opening appearing intact. In discussing this with [S] she related a history of "Daddy puts his fingers in me."

After the examination, Dr. Kechely reported S's case to the Lewis and Clark County Human Services authorities and referred her to a gynecologist. A gynecological examination was performed later that day.

The next day, March 31, Rita Pickering of the Department of Family Services conducted a videotaped interview with S. During the interview, Pickering asked S whether J.C.E. had touched her genitals. Pickering obtained some responses from S indicating that J.C.E. had indeed touched her, and some responses denying any touching. In April of 1987, S began a series of counseling sessions with counselor Margaret Stuart.

On May 6, 1987, J.C.E. was charged by information with felony sexual assault. The information was amended approximately two months later to charge J.C.E. with incest as defined at § 45-5-507, MCA. On October 28, 1987, a hearing was held to videotape S's testimony for trial and to determine if she was competent to testify at trial. After the State finished its examination of S, counsel for J.C.E. moved to have S's testimony stricken on the ground that she was not competent to testify. The court agreed and granted the motion. The competency ruling has not been appealed.

The State's list of proposed witnesses included Dr. Kechely, Rita Pickering and Margaret Stuart, all of whom would testify regarding S's out-of-court statements about the alleged incest. Counsel for J.C.E. moved in limine to have the testimony of these witnesses excluded as inadmissible hearsay under Rule 802, M.R.Evid. The court denied the motion as to Kechely, but granted it as to Pickering and Stuart. The State appeals from that ruling.

The issue presented here goes to a very important and troubling consideration in the trial of alleged perpetrators of incest or other sexual abuse. The nature of these offenses poses evidentiary problems. Often, the only witnesses are the perpetrator and the victim. The victim of incest or abuse is often very young. The inability of a very young child to recall or relate information about the alleged offense accurately and consistently can result, as it has here, in the child being deemed incompetent as a witness.

If the child is found incompetent to testify, out-of-court statements made to relatives, **312 medical personnel or social services personnel *268 may become an important source of probative evidence. However, this is hearsay; the child cannot be cross-examined as to the truth of the statements. The absence of opportunity for cross-examination also raises possible problems regarding the Sixth Amendment to the United States Constitution and Sec. 24, Art. II of the Montana Constitution. The defendant loses the opportunity to confront a witness against him. The exceptions to the general rule against hearsay testimony have been developed as "substitutes" for the safeguards provided by cross-examination.

Traditional hearsay exceptions do not always fit well in cases where the hearsay declarant is a child victim of incest or abuse. Valuable evidence may be excluded by hearsay strictures designed to protect against problems that may not exist with a child declarant. At the same time, the emotionally

charged atmosphere of the case and the fact that the alleged perpetrator may be a parent might color the child's statements and the witnesses' perception of them. See, e.g., Comment, A Comprehensive Approach to Child Hearsay Statements in Sex Abuse Cases (1983), 83 Colum.L.Rev. 1745.

These factors have led us to analyze this case with special care. Rita Pickering and Margaret Stuart were told and shown things by S that could be claimed to be probative as to J.C.E.'s guilt or innocence. However, given J.C.E.'s inability to cross-examine S in court, the proffered testimony must be examined closely for the reliability that would make it admissible hearsay.

The State argued to the District Court that several hearsay exceptions applied to the testimony of Pickering and Stuart, and renews those arguments on appeal. The State asserts that the testimony of both witnesses is admissible under the so-called "residual" hearsay exceptions found in Rules 803(24) and 804(b)(5), M.R.Evid. In the case of Ms. Stuart, the State further argues for application of the exceptions found in Rule 702, M.R.Evid. (expert testimony), and Rule 803(4), M.R.Evid. (statements made for purposes of medical diagnosis and treatment).

I. Expert Testimony Rule 702

Expert testimony involves a witness rendering an opinion using their superior knowledge of a subject not commonly understood by *269 lay persons. The hearsay exception for expert testimony is found in Rule 702, M.R.Evid., and reads as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Whether a witness is qualified as an expert is largely within the discretion of the trial judge, who has wide latitude in determining the admissibility of proffered expert testimony. State v. Eiler (Mont.1988), 762 P.2d 210, 218-19, 45 St.Rep. 1710, 1721.

According to the State's offer of proof to the District Court, Stuart would testify on four main points: (1) S has told her that incidents similar to the one alleged happen frequently with her father; (2) S can differentiate truth from fiction and has a good grasp of reality; (3) S shows no confusion about who assaulted her and (4) Stuart believes that S is telling a reliable, credible story. The State cited State v.

Geyman (Mont.1986), 729 P.2d 475, 43 St.Rep. 2125, to support its position. The District Court was correct in excluding this proffered expert testimony for two reasons.

[1] First, the Geyman case dealt with the testimony of a clinical psychologist in a sexual assault case where the alleged victim had testified. This Court held such expert testimony admissible to assist the jury in assessing the credibility of the child's testimony. The District Court found Geyman inapplicable because S was not going to testify, and her credibility as a witness therefore would not be an issue.

This Court has previously held that as a general rule, testimony by an expert evaluating **313 the credibility of a witness is inadmissible. State v. Brodniak (Mont.1986), 718 P.2d 322, 43 St.Rep. 755. In Geyman, we adopted an exception to that rule for cases where the witness is a child victim of sexual assault. Geyman, 729 P.2d at 579; see, State v. French (Mont.1988), 760 P.2d 86, 45 St.Rep. 1557. The State's offer of proof indicated that Stuart would testify as to the credibility of S's statements. This would be improper under the general rule, and the exception established in Geyman does not apply because S will not testify.

[2] Second, the State's offer of proof indicates that Stuart would identify the defendant as the perpetrator of the incest. Rule 702, M.R.Evid., states, "If ... specialized knowledge will assist the trier of fact to understand the evidence...." While Rule 704, M.R.Evid., *270 allows an expert witness to render an opinion on the ultimate issue in a case, that opinion is for the assistance of the jury. Only the jury can actually decide ultimate issues such as whether a crime was committed or the identity of the perpetrator. This question was squarely addressed in the context of child sexual assault by the Nevada Supreme Court in Townsend v. State (Nev.1987), 734 P.2d 705, 708:

Here the expert not only opined that the child had been sexually assaulted, but proceeded to identify Townsend as the perpetrator. This was improper testimony as it transcended the test of jury enlightenment and entered the realm of fact-finding that was well within the capacity of a lay jury.

The identity of the alleged perpetrator in this case is not a question requiring an expert opinion. Whether S was the victim of incest is a question that might be clarified by an expert opinion on her physical or mental state. However, whether the evidence adduced by the State establishes J.C.E. as the perpetrator requires only the common logic that is indeed well

within the capacity of a lay jury.

Despite assertions made in the defendant's brief to this Court, it does not appear that the District Court excluded Stuart's testimony because she is not qualified as an expert. The testimony was excluded because it was offered on the irrelevant question of S's credibility. With sufficient foundation, Stuart could give opinion testimony consistent with her expertise as a counselor, as long as the requirements of Rule 702 were satisfied.

II. Medical Diagnosis or Treatment Rule 803(4)

[3] The State has sought to bring Stuart's testimony within the "medical treatment" exception under a two-part test found in State v. Robinson (1987), 153 Ariz. 191, 735 P.2d 801, 809: (1) whether the declarant's motive was consistent with seeking medical treatment and (2) whether it was reasonable for the physician to rely on the information in diagnosis and treatment. The Arizona Supreme Court held in Robinson that a licensed psychologist treating a child for psychological problems resulting from sexual abuse was treating that child for "medical" purposes and admitted the psychologist's testimony under this exception.

The medical diagnosis and treatment exception is relatively new to *271 Montana law. So far, its scope has not been expanded beyond testimony by medical doctors. See, e.g., Garza v. Peppard (Mont.1986), 722 P.2d 610, 43 St.Rep. 1233. The psychologist in Robinson was licensed under Arizona law to "diagnose, treat and correct" human conditions. The Arizona court found this sufficiently similar to the work of a medical doctor to admit the psychologist's testimony under the medical treatment exception. The District Court in this case held that because Stuart is not a licensed psychologist, she does not have the authority to make the same type of diagnosis.

We decline to extend the medical diagnosis and treatment exception beyond medical doctors in this case, and we affirm the District Court's ruling on this issue. Stuart could--depending on the foundation laid, subject matter, and discretion of the court--be offered as an expert and render an opinion based on her expertise as a counselor. The State could also offer her **314 testimony relating statements made by S if the court determines that such testimony would come within the Rule 804(b)(5) residual exception discussed below. The fact remains, however, that Stuart is not licensed to render medical

diagnoses, and therefore cannot testify about such diagnoses under this exception. Furthermore, the rationale behind the medical treatment exception is less forceful where a very young child is concerned. The child might not comprehend the necessity of telling a doctor the truth in order to aid diagnosis and treatment.

III. Residual Exception Rule 804(b)(5)

The State's argument to this Court asserts that the residual hearsay exceptions found at Rule 803(24) and Rule 804(b)(5), M.R.Evid. should apply to testimony by Pickering and Stuart. The two exceptions are framed by exactly the same language:

Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

The hearsay exceptions previously discussed are based in large part upon the status of the witness as an expert or a doctor. The status and function of these individuals lends trustworthiness to their testimony as to hearsay statements that cannot be cross-examined. The hearsay exceptions in Rules 803 and 804, including the residual exceptions, *272 look to the circumstances surrounding a hearsay statement when it is made--the "circumstantial guarantees of trustworthiness" that lend reliability to the hearsay statement in lieu of cross-examination.

For example, the "excited utterance" exception found at Rule 803(2), M.R.Evid. requires that the statement be made "under the stress of excitement" caused by an event or condition. The rationale for this exception relies on

the special reliability which is regarded as furnished by the excitement suspending the declarant's powers of reflection and fabrication.

McCormick on Evidence, § 297 at 855 (E. Cleary 3d ed. 1984). The problem noted at the outset of this opinion, however, is that traditional hearsay exceptions do not always serve their purpose when children are involved. Courts in some states have attempted to apply the excited utterance exception to cases of child sex abuse. See, e.g., Smith v. State (1969), 6 Md.App. 581, 252 A.2d 277. A problem encountered with this exception is that fear, loyalty or lack of comprehension might cause a child to delay for weeks before reporting sexual abuse perpetrated by a parent or other close relative.

The residual exception argued by the State in this case has been relied upon by states such as South Dakota and Wisconsin for dealing with child hearsay.

See, Bertrang v. State (1971), 50 Wis.2d 702, 184 N.W.2d 867; State v. McCafferty, (S.D.1984), 356 N.W.2d 159. The residual exception by its own terms is designed for use where established exceptions do not apply, which would seem to make it suited to child hearsay.

The residual exception also presents a problem, however, due to the lack of guidelines for a court to use in considering what constitutes a circumstantial guarantee of trustworthiness in an incest or sexual abuse case. See, Note, State v. McCafferty: The Conflict Between a Defendant's Right to Confrontation and the Need for Children's Hearsay Statements in Sexual Abuse Cases (1985), 30 S.D.L.Rev. 663.

An attempt to avoid the pitfalls of applying existing hearsay exceptions to children has been made in the State of Washington. In 1982, the Washington legislature enacted RCW 9A.44.120, which specifically declares child hearsay statements concerning sexual contact admissible as evidence in a criminal proceeding. However, the statute appears to have done little to alleviate the lack of guidelines encountered with the residual exception. In the first case where it *273 interpreted the statute, the Washington Supreme Court felt compelled to give nine guidelines for its application. State v. Ryan (1984), 103 Wash.2d 165, 691 P.2d 197.

****315** Our review of cases from other jurisdictions indicates that special consideration must be given to proffered hearsay testimony when the child declarant is unavailable as a witness. Of the various approaches, the residual exception presents the fewest problems in its application to child hearsay. Nonetheless, it requires a set of guidelines for use in cases of this kind.

[4] The State argues for application of the residual exception from either Rule 803 or Rule 804. However, Rule 803 deals with hearsay where the availability of the declarant is immaterial. The fact that S is unavailable as a witness is the very reason why hearsay testimony has become important to this case. Therefore, we hold that Rule 804(b)(5), M.R.Evid., shall henceforth be the rule under which proffered hearsay, other than expert testimony, is considered for admissibility in cases of incest or other sexual abuse of children when the alleged victim is unavailable as a witness.

Many of the guidelines set forth below for application of Rule 804(b)(5) have been implemented in other jurisdictions. They are not mandatory, and

are presented only as considerations for a trial judge to bear in mind when deciding the admissibility of proffered hearsay testimony. Some may not apply to a given case.

IV. Child Hearsay Guidelines

[5][6] Because the issue being addressed here arises only when a child hearsay declarant is unavailable as a witness, preliminary findings concerning the child's availability must be made by the District Court before hearsay testimony can be considered under Rule 804(b)(5):

1. The victim must be unavailable as a witness, whether through incompetency, illness, or some other like reason (e.g., trauma induced by the courtroom setting).
2. The proffered hearsay must be evidence of a material fact, and must be more probative than any other evidence available through reasonable means.
3. The party intending to offer the hearsay testimony must give advance notice of that intention.

Once the court has found these conditions to be present, Rule 804(b)(5) can be applied to any proffered hearsay testimony. The *274 guidelines that follow are presented in groups corresponding to the main components of such testimony:

1. *The Attributes of the Child Hearsay Declarant.*
 - a. The child's age.
 - b. The child's ability to communicate verbally.
 - c. The child's ability to comprehend the statements or questions of others.
 - d. The child's ability to tell the difference between truth and falsehood.
 - e. The child's motivation to tell the truth (i.e., whether the child understands the general obligation to speak truthfully and not fabricate stories).
 - f. Whether the child possessed sufficient mental capacity at the time of the alleged incident to receive an accurate impression of it.
 - g. Whether the child possesses sufficient memory to retain an independent recollection of the events at issue.
2. *The Witness Relating the Hearsay Statement.*
 - a. The witness's relationship to the child.
 - b. Whether the relationship between the witness and the child might have an impact on the trustworthiness of the hearsay statement.
 - c. Whether the witness might have a motive to fabricate or distort the child's statement.
 - d. The circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the

child could confide.

3. *The Statement Itself.*

- a. Whether it contains knowledge not normally attributed to a child of the declarant's age.
- b. Whether it was volunteered spontaneously.
- c. The suggestiveness of prior statements by the witness relating the **316 statement or third parties present when the statement was made.
- d. If statements were made by the child to more than one person, whether those statements were consistent.
- e. Its nearness in time to the incident at issue.

4. *The Availability of Corroborative Evidence.*

- a. Whether the act alleged can be corroborated.
- b. If the child's statement identifies a perpetrator, whether that identity can be corroborated.

*275 c. Such corroboration can come from direct, physical evidence, or more circumstantial evidence of motive or opportunity.

5. *Other Considerations.*

The particular facts of a case may present the court with considerations other than those outlined above that in the court's judgment will bear on the admissibility of the proffered testimony.

[7][8] We must emphasize that in utilizing these guidelines, the admissibility of evidence remains in the discretion of the trial judge. Where a court is determining circumstantial guarantees of trustworthiness, we will defer to the court's decision unless an abuse of discretion is clearly shown. State v. LaPier (1984), 208 Mont. 106, 676 P.2d 210. In order for this Court to conduct proper review of decisions under Rule 804(b)(5), a trial judge's determination utilizing these considerations must be reduced to writing. Therefore, a District Court ruling on the admissibility of child hearsay under Rule 804(b)(5), M.R.Evid., shall issue findings of fact and conclusions of law setting forth its decision.

We affirm the District Court's decision as to the admissibility of the State's proffered testimony under the exceptions for expert testimony and medical treatment. We remand the case to the District Court for entry of findings of fact and conclusions of law as to the applicability of Rule 804(b)(5), M.R.Evid., to testimony by Pickering or Stuart relating statements made by S, and for further proceedings.

AFFIRMED AND REMANDED.

TURNAGE, C.J., and HARRISON, WEBER, GULBRANDSON and HUNT, JJ., and DALE COX, District Judge [FN*], concur.

FN* Sitting for SHEEHY, J.

767 P.2d 309, 235 Mont. 264

END OF DOCUMENT



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 327-2105
EMAIL: attorney@ci.missoula.mt.us

January 30, 2003

Chairman Duane Grimes and Honorable Members of the Senate
Judiciary Committee:

Please vote for Senate Bill 263. I am a prosecutor for the City of Missoula and have prosecuted cases on behalf of the people of the state of Montana for over 16 years. This bill clarifies Montana law concerning testimony from children witnesses of violent and sexual crimes.

There are three issues that all Montanans can agree upon. First, that the law, what ever it is, should be accessible so that all people who want or need to know what the law is can find out what it says. Law must be findable. Second, a defendant's rights in a criminal trial, including his right to confront witnesses called against him, is very important, indeed, it is constitutionally guaranteed. Finally, once we have made sure that the defendant in a criminal case has his constitutional rights guaranteed, if children are not needed in court that is a good thing. Passage of Senate Bill 263 is consistent with all three of these beliefs we all hold dear.

First, Senate Bill 263 puts a 1988 ruling by the Montana Supreme Court into statutory code. The ruling, State v. J.C.E., 235 Mont. 264, 767 P.2d 309 (1988), is the law. When law is confined to a Supreme Court opinion, access to the ruling is confined to lawyers and non lawyer people who are interested in legal matters. The ruling from J.C.E. should be codified in the criminal procedure statutes. That just makes good sense.

Second, a defendant's constitutional rights in a criminal case, including the right to confront witnesses called against him, are fully protected under this bill. Senate Bill 263 allows children's hearsay statements into evidence only in cases where the child was the victim of a violent or sexual assault or a witness to a violent or sexual,

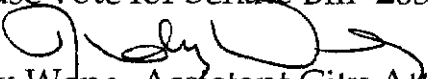
Exhibit No. 2
Date 1-30-03
File No. SB263

assault. Procedurally, an offender is entitled to written notice describing the statement including what the child said, the approximate date, time, and location of the statement, who the child told and the circumstances of the statement that indicate why the statement is reliable. This bill gives a detailed list of factors for the court to review in its trustworthiness analysis. The factors include the child's age, ability to communicate and tell the difference between the truth and a lie. The judge may also review the statement for facts that children of that age shouldn't know. The judge may look to the witness the child spoke to and evaluate the timing of the statement and the relationship between the witness and the child. The court must find, after a hearing, that the time, content and circumstances of the statement provide circumstantial guarantees of trustworthiness. The judge shall enter findings of fact and conclusions of law in support of his decision on the admissibility of the evidence. A judge, who is experienced at determining the reliability of witnesses, is given the authority to decide whether this child's statement is trustworthy thus admissible, or not.

In the J.C.E. case The Montana Supreme Court dictated this procedure as the formula to follow when a child's statement is at issue. Thus, this procedure has already been approved as the procedure to follow to protect the defendant's rights.

Senate Bill 263 does not keep all children from testifying in court. This bill will allow some children's statements admitted into court and sometimes we will have an opportunity to keep kids out of court. The job assigned to children is to grow, learn, and have fun. The job assigned to kids is not to appear in court. We already know from domestic violence cases that it is extremely difficult for one adult who loves and fears another family member to testify against an adult family member. Why should it be easier for a child to testify when the offender is probably someone that they know and trust?

Please vote for Senate Bill 263.


Judy Wang, Assistant City Attorney

1. When does Senate Bill 263 apply to a child's statement?

A statement made by a child victimized in a sexual or violent offense or by a child who witnessed a sexual or violent offense may be admissible in a criminal case under S. B. 263. The offense must be at issue in the criminal case. (§ One (1)(a)(i)(ii).

2. What procedure protects the defendant's rights, or the state, from being surprised by this evidence?

a. The party (either defense or prosecution) who intends to offer the statement must give notice to the opposing party with enough time to allow them to prepare for the statement. The notice must include what the child said, the approximate date, time, location of the statement, who the child told and the circumstances of the statement that indicate why the statement is reliable. (§ One (1)(e).

b. The Court must find that the time, content and circumstances of the statement provide circumstantial guarantees of trustworthiness at a hearing conducted away from the jury. (§ One (1)(b).

c. The trial judge has the discretion to decide the admissibility of the evidence. The judge shall issue findings of fact and conclusions of law in support of his decision on the admissibility of the evidence. On appeal the standard is whether the trial judge clearly abused his discretion. (§ One (2).

3. What standards does the court follow to decide whether the child's statement is admissible?

a. The child's statement relates to an important fact and is more relevant on that point than other evidence available through reasonable efforts. (§ One (1)(d).

b. The statement will be offered only when the child has testified and the court finds that the child did not fully and accurately describe the offense or the circumstances surrounding the offense or the child is unavailable as a witness because the child died, is out of the jurisdiction, is not competent, is ill or unable to testify

because of the trauma induced by the courtroom setting. (§ One (1)(c)(i)(ii).

c. The judge may consider the following factors when the judge decides whether the child's statement is admissible. The factors are the child's age, ability to communicate out loud and comprehend questions and statements, ability to tell the difference between the truth and a lie, the child's motivation to tell the truth and the obligation to tell the truth, the child's ability to remember and recall the offense. (§ One (3)(a)(i)-(vii).

d. The court may also consider the relationship of the witness who heard the statement to the child, whether that relationship might impact the trustworthiness of the child's statement, whether the witness has a motive to fabricate the child's statement and the circumstances where the witness heard the statement including timing of the statement related to the offense and whether there was another person the child could have confided in. (§ One (3)(b)(i)-(iv).

e. The judge may review the child's statement for information children that age don't usually know, whether the child volunteered the statement, whether the witness made suggestive comments, whether the child was consistent if comments were made to more than one witness, and how near in time the statement was made to the time of the offense (§ One (3)(c)(i)-(v).

f. The judge may evaluate whether corroborative evidence is available, either physical evidence or circumstantial evidence of motive or opportunity including whether an act can be corroborated, if identity of an offender is an issue whether the identity can be corroborated and other considerations that may bear on the admissibility of the child hearsay. (§ One (3)(d)(i)(ii)(e).

**YELLOWSTONE COUNTY ATTORNEY**

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(406) 256-6931 - Fax

January 28, 2003

Senate Judiciary Committee

Mr. Chairman:

The State of Montana must act to better protect child witnesses. Passage of Senate Bill 263 will protect child witnesses without offending the constitutional rights of defendants.

Specifically, this Bill protects the children who are victims or witnesses of sexual and violent crimes. A sexual predator typically threatens a child victim with violence if he tells anyone. This pattern of sexual abuse followed by threats, creates fear and reluctance in the child to talk about the abuse. Typically, a child will not tell anyone about what happened, including the child's parents. Children who do brave their fears and overcome the reluctance to tell these most private matters to their parents, or a social worker, are often overcome with embarrassment while speaking at trial. The passage of Senate Bill 263 would protect the well-being of these children in Montana criminal proceedings by providing them a voice, when they have none.

In addition, it is extremely difficult for a young child to articulate what has happened to her, or what she has seen, because of her limited vocabulary. A toddler struggles with explaining different shapes like circles and squares, that same toddler naturally has tremendous difficulty explaining how she was sexually or physically abused; if she is able to at all. The fear and reluctance to talk about the abuse, combined with a limited vocabulary, prevents the prosecution from proceeding against defendants in many cases. Senate Bill 263 allows a prosecutor to overcome these challenges at trial by allowing reliable people to testify about what the child victim, or witness, desperately struggled to explain prior to trial.

Senate Bill 263 would provide a statutory exception to the hearsay rule without denying a defendant any of his Constitutional rights. The State of Montana affords defendants Constitutional rights which must not be abridged. This Bill does not abridge a defendant's rights because it allows the prosecution to seek the hearsay exception only in narrowly defined circumstances. The Judge in the criminal proceeding, acting as the gatekeeper of the defendant's rights, uses her discretion to apply or not apply the hearsay exception and follows the Montana Supreme Court dictates found in *State v. J.C.E.*, 235 MT 264 (1988). This Bill provides a voice to children in criminal proceedings while protecting the defendant's Constitutional rights.

Sincerely,


Dennis Paxinos
Yellowstone County Attorney


Fred Snodgrass
Deputy Yellowstone County Attorney



January 29, 2003

Senator Duane Grimes
Chairman, Senate Judiciary Committee
Montana Legislature
State Capitol
Helena, Montana 59620

Re: SB 263

Dear Chairman Grimes,

I am writing to express my support for SB 263. As you know since you are the chief sponsor of this proposal, this bill would authorize a statutory exception to general prohibition against hearsay evidence for the testimony of children who have witnessed or been victims in criminal proceedings involving sexual offenses and other crimes of violence. This legislation is particularly necessary for the following reasons:

1. Children are often the only witnesses to domestic violence.
2. Children are virtually always the only witnesses to their own physical or sexual abuse.
3. Offenders often tell children that they will be responsible for terrible things happening to the offender, the child, the family, etc., and when the offender is arrested and/or social workers get involved, the child often clams up and feels responsible for the breakup of the family.
4. Our evidentiary rules/court procedures don't take into account how hard trials can be for kids.
5. Prosecutors are in a terrible position in deciding whether to pursue or drop a case that would rely on a child testifying against a parent at trial.

As such, I hope you will be able to convince your colleagues of the value of this bill. If I can be of any further assistance, please let me know.

Yours truly,

Fred Van Valkenburg
Missoula County Attorney

CUSTER COUNTY ATTORNEY

1010 Main Street
Miles City, Montana 59301

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FAX: (406) 874-3450
e-mail: c.magera@co.custer.mt.us

January 27, 2003

RE: LC 175 Child Hearsay Exception

To Whom It May Concern:

I strongly support the proposed Child Hearsay Exception legislation contained in LC 175 permitting the admission into evidence of statements by child victim's of sexual abuse.

As the Custer County Attorney, I have worked for the past three years with a multi-disciplinary team of professionals in Custer County to establish a regional Child Evaluation Center for conducting forensic interviews and physical examinations of child victims of physical and sexual abuse. The purpose of the Center is to assure that child victims are interviewed and examined only once. The purpose of the Center is, also, to prevent re-victimization of children by the legal system through repeated interviews and examinations. Although the Center has made great strides in protecting child victims, we need the legislature's help to enable prosecutors to present hearsay statements to juries rather than requiring small children to take the witness stand and testify against the perpetrators of the abuse, who all too often, are the child's parent.

Currently, I am prosecuting two cases of sexual abuse involving young children. The children in these cases range from 3 years to 8 years of age. Two of the children have significant language and emotional delays. The perpetrators of the sexual abuse are the children's parents. Because Montana does not have an exception for child hearsay statements, these children must testify at the trials of their parents. How terrifying for these children! How difficult for the State's prosecutors to proceed to trial knowing they must put small children on the witness stand.

Forty (40) states have recognized the need to protect child victims and have adopted similar legislation. Please give state prosecutors this tool to protect the children who have already endured so much.

Sincerely,



Coleen I. Magera
COUNTY ATTORNEY

CUSTER COUNTY ATTORNEY

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Miles City, Montana 59301

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e-mail: custerca@midrivers.com

January 25, 2003

Letter of Support

Re: Child hearsay exception

This letter is written in support of the proposed legislation regarding an exception to allow the admission of hearsay statements of child victims of sexual abuse. This is desperately needed to effectively protect the rights of society's most vulnerable people, small children. I urge you to adopt this legislation as proposed.

As a prosecutor, I am all too familiar with the unfortunate scenario that plays out time and time again. A small child is sexually abused by a family member, but given the nature of the crime, the child is the only witness to the crime. Often these children are very young. Talking about these events is obviously traumatic for these children and they need to heal and move on. This legislation, which has many safeguards to protect a defendant's rights, would allow statements made by the child to someone she trusts to be introduced at trial without necessarily forcing the child to get up in front of a bunch of strangers and tell what happened to them again (in court).

This legislation is needed and is already found, in some version, in about forty (40) states. Please provide these children, who have already suffered so much, the small measure of protection found in this legislation.

Sincerely,



Paul R. Emerson
Deputy County Attorney

January 29, 2003

To: Senator Duane Grimes and other destinguished members
of the Montana Senate Judiciary Committee

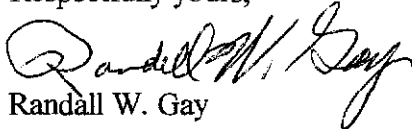
Subject: Senate Bill No. 263

Dear Senator Grimes and other destinguished Committee Members:

I would like to urge your support in bringing this Bill out of Committee. I believe that this is an important piece of legislation and deserves enactment into law. Recently, I experienced a case in my family that involved child hearsay testimony. Fortunately, the child's videotaped statement was sufficient and the child was not forced to testify against the father in a public court room. I believe if the child had been required to testify in court, it could have resulted in a devastating life experience for the child.

Protection of children who have already been tramitized as victims in sexual offenses and other crimes of violence must take precedence. I would appreciate your support of this important legislation.

Respectfully yours,



Randall W. Gay
119 E. Crestline Drive
Missoula, MT 59803

phone: 406 721-5288

January 23, 2003

Chairman Duane Grimes and Members of the Senate
Judiciary Committee,

Professionally, I work with families and young children. In that role, I am the mandated reporter of child abuse and neglect.

Personally, I have a 4 year old granddaughter who was the victim of sexual abuse committed by a close relative. Fearing that she would have to testify at the trial, thus causing further trauma and revictimization, was an enormous stress. Fortunately, for a variety of reasons, her taped interview with an expert sexual abuse counselor was used instead.

I strongly urge you to support Senate Bill 263. Hopefully, passing this bill will have a positive impact on the future of young victims of abuse crimes.

Sherry Gay
119 E Crestline Dr.
Missouri, MO 59803



M O N T A N A
C O A L I T I O N A G A I N S T
D O M E S T I C A N D S E X U A L
V I O L E N C E

To: Chairman Grimes and Members of the Senate Judiciary Committee
Date: January 30, 2003
Re: Testimony in Support of SB 263

I am here representing the Montana Coalition Against Domestic & Sexual Violence. The Coalition was incorporated in 1986 and currently represents over 43 domestic and sexual violence programs across Montana. We work to end domestic and sexual violence through advocacy, public education, public policy, and program development.

We stand here in strong support of SB 263 and would like to extend our thanks to Senator Grimes for sponsoring this bill, which would allow statements made by a child who has been victimized in a sexual or violent offense or by a child who has witnessed such an offense to be admissible in a criminal case under strictly controlled circumstances and standards.

We believe that SB 263 is a family-friendly bill. Adding this exemption to Montana's hearsay rule will provide important protections for those children who have already been traumatized by violence and for whom a forced courtroom appearance would amount to further victimization. And, the procedural safeguards that the bill contains also protect a defendant's rights, by ensuring proper notice and maintaining judicial discretion.

Violent and sexual crimes involving children as either victims or witnesses are some of the worst cases that come before our courts. They have the potential to rip families and children's lives apart. Gone unpunished, the fallout is worse; many perpetrators who prey on children don't stop until they are stopped.

SB 263 will add one more exception to the already 31 contained in Montana Rules. It's an important one, and it's one that has already been acknowledged by the Supreme Court. I urge you to give SB 263 a "do pass recommendation."

Beth Satre, Public Policy Specialist
Montana Coalition Against Domestic & Sexual Violence

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RECEIVED
JAN 31 2003
SENATE No. 3
Date 1-30-03
SB 263

Chairman Duane Grimes
Members of the Senate Judiciary Committee

For the record my name is Tootie Welker. I am the executive director of a non-profit organization in Sanders County that provides direct services to victims of crimes. Last year we assisted over 200 victims of domestic violence, sexual assault and child abuse.

Although I understand and appreciate the need for upholding the rights of the accused, I also believe we need to give more balance to the rights of victims – especially innocent victims – children.

As someone who deals with victims every day, it is especially difficult to attend to the needs of a child and their family when it is discovered that the child has been sexually victimized – most frequently by someone they know, a parent, relative or neighbor. But what can be even more difficult to address, is to explain to a parent or a child why the bad person who hurt them is not going to be punished because the prosecutor does not want to put the child on the stand. This is the point where some folks lose faith in our justice system.

According to present statistics, 1 out of 3 girls and 1 out of 7 boys will be sexually victimized before they reach adulthood. And for most, it happens while they are young. To then re-victimize these innocent victims by putting them on the stand is in many cases simply too much. SB 263 offers an option that still attends to the rights of offenders while also providing additional protection to children.

In Sanders County, a jury convicted a father of sodomizing his 5-year-old son. The case was appealed and overturned on a technicality. The prosecutor chose to settle for a plea bargain rather than having to put this child on the stand, a second time. So instead of getting 10 years in prison for incest & having to register as a sex offender, the father pled guilty to misdemeanor family member or partner assault. And he no longer has to register as a sex offender. Is this justice? Does this keep communities safe? Does it keep our kids safe? The answer is no.

It is time for us to recognize that sexual abuse of children happens, and far more frequently than perhaps many of you would like to believe. This is one more tool to assist with granting justice to these children without having to re-traumatize them. And it takes into consideration the rights of the accused.

I sincerely hope that you will give SB 263 a do pass recommendation and do your part to help keep kids safe.

4
1-30-03
SB 263

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE**

DATE 1-30-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-30-03 BILL # HB 48 AMENDMENT #

MOTION: Sen Mc Gee moved
that HB 48 be
amended.

NAME	AYE	NO
SEN. BRENT CROMLEY	☒	☐
SEN. AUBYN CURTISS	☒	☐
SEN. JEFF MANGAN	☐	☒
SEN. JERRY O'NEIL	☐	☒
SEN. GERALD PEASE	☐	☒
SEN. GARY PERRY	☐	☒
SEN. MIKE WHEAT	☐	☒
SEN. DAN MCGEE, VICE CHAIRMAN	☒	☐
SEN. DUANE GRIMES, CHAIRMAN	☒	☐

4 5



SENATE STANDING COMMITTEE REPORT

January 31, 2003

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 48** (third reading copy -- blue) be **concurrred in**.

Signed:

A handwritten signature in black ink, appearing to read "Duane Grimes", is written over a horizontal line. Below the line, the text "Senator Duane Grimes, Chair" is printed.

Senator Duane Grimes, Chair

To be carried by Senator Mike Wheat

- END -

Committee Vote:
Yes 6, No 2.

211320SC.ssc

SP

MONTANA SENATE COMMITTEE PROXY

DATE 1-30-03

I request to be excused from the Senate Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Senator Wheat.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
78	X	
84		X

SENATE BILL/AMENDMENT	AYE	NO

Rep. Isabel Bean
(Signature)

DATE January 30, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 123 - SB263

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Kristi Blaza	459-1318	MT Beer & Wine Wholesalers	123	✓	
Kristi Blaza	459-1318	KIDS Behavioral Health	263	✓	
Toohie Welker	827-3218	Self	263	✓	
Beth Sater	443-2383	MT Coalition Against Domestic & Sexual Violence	263	✓	
LONDA MOON	495-0571	my children, my self	263	✓	
Mary Huigen	443-3360	Friendship Center, Helena	263	✓	
Bob Weaver	523-4682	Missoula City Police	263	✓	
Ali Boringdon	444-5876	Attorney General's Office	263	✓	
KATHY McFouan	443-1570	MT CTY ATTYS Assn	263	✓	
Jim Kembel	442-8684	Self	263	✓	
Judy Wong	523-4617	City of Missoula	263	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY